

Message Text

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FM USMISSION GENEVA

TO SECSTATE WASHDC IMMEDIATE 8081

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E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: INDONESIA TAX TREATY

REF: STATE 86228

SUMMARY. FIRST, DEFINITION LITERALLY CONCEDES INDONESIAN ARCHIPELAGO CLAIM WITHIN DEFINITION OF TERM "TERRITORY" UNDER INDONESIAN LAW. SECOND, WHATEVER THE LEGAL ISSUES, INDONESIANS ARE LIKELY TO PERCEIVE US AGREEMENT AS SIGNALLING A POTENTIAL SOFTENING IN OUR UNWILLINGNESS TO RECOGNIZE ARCHIPELAGO CLAIM WITHOUT AN LOS TREATY. THIS WOULD BE WRONG TIME TO SIGNAL SUCH CHANGE IF WE HOPE TO ELICIT FOREIGN MINISTER MOCHTAR'S COOPERATION IN RESOLVING OTHER LOS TREATY ISSUES TO US SATISFACTION. END SUMMARY.

1. LOS DEL DOES NOT RPT NOT BELIEVE DEFINITION OF THE TERM "INDONESIA" CITED REFTEL IS SATISFACTORY AND DOES NOT BELIEVE THAT IT IS CONSISTENT WITH FUNDAMENTAL US NATIONAL SECURITY INTERESTS OR WITH THE US LAW OF THE SEA POSITION. CONSISTENT US POSITION HAS BEEN THAT WE WILL NOT RPT NOT RECOGNIZE THE ARCHIPELAGO CONCEPT EXCEPT AS PART OF A COMPREHENSIVE LOS TREATY. THUS, WE DO NOT RECOGNIZE THE ARCHIPELAGO CONCEPT AS A PRINCIPLE OF INTERNATIONAL LAW

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NOR DO WE RECOGNIZE INDONESIA AS AN "ARCHIPELAGO." AS PART OF AN OVERALL TREATY, HOWEVER, WE ARE PREPARED TO ACCEPT THE ARCHIPELAGO AND STRAITS ARTICLES AS CONTAINED IN THE INFORMAL COMPOSITE NEGOTIATING TEXT (ICNT). MOREOVER, INDONESIA'S LAW REGARDING THE CLAIMED ARCHIPELAGO IS NOT IN ACCORDANCE WITH THE ICNT. IT DOES NOT PROVIDE ASSURANCES FOR SHIPS IN TRANSIT THAT ARE CONTAINED IN THE

ICNT. OUR WILLINGNESS TO RECOGNIZE ARCHIPELAGOS EVEN AS PART OF AN LOS TREATY IS A CONCESSION ON THE PART OF THE US WHICH INVOLVES HAVING VAST AREAS OF WHAT ARE NOW HIGH SEAS FALLING WITHIN INDONESIA'S SOVEREIGNTY.

2. THE DEFINITION OF THE TERM INDONESIA IS CLEARLY PREJUDICIAL TO OUR JURIDICAL POSITION IN SPITE OF THE REFERENCE TO "IN ACCORDANCE WITH INTERNATIONAL LAW." THAT PHRASE DOES NOT SATISFACTORILY SAVE THE CLAUSE "THE TERRITORY OF THE REPUBLIC OF INDONESIA AS DEFINED IN ITS LAWS," WHICH LAWS INCORPORATE THE ARCHIPELAGO. ACCEPTANCE OF SUCH A TERM IS YET ANOTHER STEP, AND AN UNDESIRABLE ONE, IN THE TREND TOWARDS COASTAL STATE SOVEREIGNTY OVER HUGE AREAS OF THE OCEAN.

3. IT IS ESSENTIAL TO ENSURE THAT INDONESIA HAS A KEEN INTEREST IN THE CONCLUSION OF A LAW OF THE SEA TREATY SO THAT SHE WILL GET INTERNATIONAL RECOGNITION OF THE ARCHIPELAGO. TO CONCEDE THE ISSUE AS SUGGESTED IN REFTEL IS TO REMOVE ONE INCENTIVE. MOREOVER, WE WANT TO ENSURE THAT INDONESIA PLAYS A MODERATE AND CONSTRUCTIVE ROLE IN THE DEEP SEABED NEGOTIATION IN RECOGNITION THAT THAT IS THE KEY OBSTACLE TO A COMPREHENSIVE TREATY. REMOVING RECOGNITION OF THE ARCHIPELAGO IN WHOLE OR IN PART AS AN INDONESIAN OBJECTIVE WOULD CLEARLY NOT FURTHER OUR CAUSE IN THE SEARCH OF A COMPREHENSIVE TREATY.

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4. WE WILL BRING OUR CONCERNS REGARDING THIS DEFINITION TO THE FRENCH, FRG AND UK LOS DELS. WE WOULD NOT PLAN TO RAISE IT WITH THE CANADIANS WHO, OF COURSE, HAVE ASPIRATIONS FOR AS MUCH SOVEREIGNTY IN THE OCEANS AS THE TRAFFIC WILL BEAR.

5. IN SUMMARY, WE ARE AGAINST THE ACCEPTANCE OF SUCH A DEFINITION. RICHARDSON

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